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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA  
SECOND APPELLATE DISTRICT  
DIVISION SEVEN

THE PEOPLE,

Plaintiff and Respondent,

v.

KENNY SMITH,

Defendant and Appellant.

B236618

(Los Angeles County  
Super. Ct. No. NA088426)

APPEAL from a judgment of the Superior Court of Los Angeles County,  
Tomson T. Ong, Judge. Affirmed.

Holly J. Jackson, under appointment by the Court of Appeal, for Defendant  
and Appellant.

Kamala D. Harris, Attorney General, Dane R. Gillette, Chief Assistant  
Attorney General, Lance E. Winters, Senior Assistant Attorney General, Susan Sullivan  
Pithey and David Zarmi, Deputy Attorneys General, for Plaintiff and Respondent.

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Kenny Smith pleaded no contest to possession of cocaine for sale in violation of Health and Safety Code section 11351 and to possession of concentrated cannabis in violation of Health and Safety Code section 11357, subdivision (a). He was sentenced to an aggregate state prison term of four years.<sup>1</sup> Prior to Smith's plea, the trial court denied a motion to suppress the cocaine police recovered from Smith following a stop on the street. On appeal, Smith contends the stop was unlawful, and his suppression motion should have been granted. We affirm the judgment.

### **FACTUAL AND PROCEDURAL BACKGROUND**

The People's evidence at the suppression hearing established Long Beach Police Officers Davie Weise and Bernardo Barajas were on duty on the afternoon of March 18, 2011, when they saw Smith with another man near the intersection of 20th and Pacific Avenue. The two men were impeding the flow of traffic in violation of a Long Beach ordinance, by walking next to parked cars in the street rather than on the sidewalk.<sup>2</sup> Cars had to stop or swerve to avoid hitting them. Smith and his companion turned into an alley, and the officers followed in their patrol car.

Officer Weise testified, when he was approximately 10 feet away, he saw Smith retrieve "an unknown white object" from his front pants pocket and put it into his mouth. Officer Barajas also testified he saw Smith "put something" in his mouth. The officers pulled up, got out of the patrol car, and approached the two men. Weise ordered Smith to stop, but Smith continued walking. He did comply when the officer repeated his command. Weise escorted Smith to the patrol car, where he conducted a pat search of Smith. The officers then noticed Smith was chewing something, and Barajas told Smith

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<sup>1</sup> Smith admitted he had suffered one prior serious or violent felony conviction within the meaning of the "Three Strikes" law (Pen Code, §§ 667, subds. (b)-(i); 1170.12, subds. (a)-(d)) and two prior narcotics convictions within the meaning of Health and Safety Code section 11370.2, subdivision (a).

<sup>2</sup> Long Beach Municipal Code section 10.58.040 provides: "No pedestrian shall stand in any roadway, other than in a safety zone or crosswalk, nor shall any pedestrian walk lengthwise along and within a roadway in a manner that interferes with the lawful movement of traffic."

to “spit it out.” Smith leaned forward and spit out a clear plastic bindle, which contained powder cocaine. Smith spontaneously said, “I sniff cocaine and smoke weed. I don’t sell.” Weise handcuffed Smith and placed him in the patrol car, where Barajas advised him of his right to remain silent, to the presence of an attorney, and, if indigent, to appointed counsel (*Miranda v. Arizona* (1966) 384 U.S. 436 [86 S.Ct. 1602, 16 L.Ed.2d 694] (*Miranda*)), which Smith waived. Smith then told Barajas he had marijuana at home and gave the officers consent to search his house.<sup>3</sup>

Smith’s testimony at the suppression hearing differed markedly from the People’s evidence. According to Smith, he was walking alone through the alley, when the officers sped their car through the alley and stopped. Officer Weise got out of the car and jogged towards Smith with his gun drawn and ordered him to “hold.” Smith stopped and raised his hands. Weise brought Smith to the front of the car, and had him kneel down. Smith said he was not on probation or parole, and then Weise patted him down. Officer Barajas asked Smith why he was running down the alley, adding that he contemplated shooting Smith at the time. Barajas also told Smith he was being detained because he had “crossed the street funny.” Weise found the cocaine in Smith’s pocket and asked Smith what he was doing with it. Smith explained he “snorted” cocaine, but did not sell it. Weise placed him in handcuffs. Barajas never advised Smith of his *Miranda* rights, and Smith felt compelled to give the officers consent to search his home.

At the conclusion of the hearing, defense counsel moved to suppress the powder cocaine as the fruit of an unlawful stop, contending (1) Smith was unlawfully stopped without any reasonable suspicion because he was walking in the street in compliance

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<sup>3</sup> The subsequent police search of Smith’s house yielded marijuana, concentrated cannabis and \$500 in cash.

with Vehicle Code section 21956,<sup>4</sup> which preempts Long Beach Municipal Code 10.58.040; (2) Smith was subjected to an impermissible pat search for weapons without articulable facts indicating he might be armed; (3) the seizure of the powder cocaine was unlawful; and (4) Smith was never advised of his *Miranda* rights, and his consent to search his home was coerced.

The trial court denied the motion to suppress, concluding Smith was reasonably stopped for causing a safety hazard by impeding traffic, and the ensuing pat search and seizure of powder cocaine were lawful. The court also determined the officers obtained a valid waiver of Smith's *Miranda* rights and voluntary consent to search Smith's house.

## **DISCUSSION**

### *1. Standard of Review*

In reviewing the denial of a motion to suppress, the appellate court defers to the trial court's express or implied factual findings when supported by substantial evidence (*People v. Zamudio* (2008) 43 Cal.4th 327, 342; *People v. Ayala* (2000) 23 Cal.4th 225, 255) and independently determines, based on relevant legal principles, whether the search or seizure was reasonable under the Fourth Amendment. (*Zamudio*, at p. 342; *People v. Glaser* (1995) 11 Cal.4th 354, 362.) Whether relevant evidence obtained by assertedly unlawful means must be excluded is determined exclusively by deciding whether its suppression is mandated by the federal Constitution. (Cal. Const., art I, § 28; *In re Randy G.* (2001) 26 Cal.4th 556, 561-562; *In re Lance W.* (1985) 37 Cal.3d 873, 885-890.)

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<sup>4</sup> Vehicle Code section 21956 provides, "(a) No pedestrian may walk upon any roadway outside of a business or residence district otherwise than close to his or her left-hand edge of the roadway. [¶] (b) A pedestrian may walk close to his or her right-hand edge of the roadway if a crosswalk or other means of safely crossing the roadway is not available or if existing traffic or other conditions would compromise the safety of a pedestrian attempting to cross the road."

## 2. *The Traffic Stop Was Justified*

On appeal, Smith has omitted his challenges in the trial court to the lawfulness of the pat search and the seizure of powder cocaine in his possession. Having failed to argue these points on appeal, we deem them waived or abandoned. (See *Breneric Associates v. City of Del Mar* (1998) 69 Cal.App.4th 166, 188, fn. 8.) Accordingly, there is no dispute that the warrantless seizure of powder cocaine from Smith was valid, if the traffic stop, or the initial stop of Smith, was lawful.

A traffic stop is justified if the police officer has a reasonable suspicion a traffic violation has occurred. (*Whren v. United States* (1996) 517 U.S. 806, 809-810 [116 S.Ct. 1769, 135 L.Ed.2d 89]; *Kodani v. Snyder* (1999) 75 Cal.App.4th 471, 476.)

Smith argues the traffic stop of Smith based on Long Beach Municipal Code section 10.48.04 was both preempted by the Vehicle Code and “unreasonable and unreliable based on the evidence.” He maintains the officers’ testimony failed to show facts justifying a reasonable suspicion that Smith was walking in the street in violation of Vehicle Code section 21956. Specifically, Smith contends Officer Barajas’s testimony that one or more cars had to “slow down” to avoid hitting him, showed Smith was yielding the right of way to motorists as required by Vehicle Code section 21954, subdivision (a).<sup>5</sup> Smith asserts Officer Weise’s testimony should be discounted because he improperly relied on the preempted municipal ordinance to justify the traffic stop.

If an objectively reasonable basis for the traffic stop exists, the stop is valid whether or not the officer actually relied on that ground. The officer’s subjective intent or motivation is irrelevant. (*People v. Valencia* (1993) 20 Cal.App.4th 906, 915-916; *People v. Miranda* (1993) 17 Cal.App.4th 917, 923-926; *People v. Uribe* (1993) 12 Cal.App.4th 1432, 1435-1438; see *Whren v. United States*, *supra*, 517 U.S. at pp. 809, 812-813.) The officers testified Smith and his companion were walking next to parked

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<sup>5</sup> Vehicle Code section 21954, subdivision (a) provides, “Every pedestrian upon a roadway at any point other than within a marked crosswalk or within an unmarked crosswalk at an intersection shall yield the right-of-way to all vehicles upon the roadway so near as to constitute an immediate hazard.”

cars in the street rather than using the sidewalk. Their conduct, which forced cars either to stop or slow down and to swerve around them, created a traffic hazard by impeding motorists and endangering themselves. As the trial court made clear, “The conduct is the conduct. You are walking on the street as opposed to the sidewalk. It doesn’t matter if it’s the municipal code or Vehicle Code. The conduct itself violates the law.” The court’s finding there existed specific and articulable facts that unlawful conduct had occurred, justifying a traffic stop, was supported by substantial evidence.

### **DISPOSITION**

The judgment is affirmed.

**WOODS, J.**

**We concur:**

**PERLUSS, P. J.**

**ZELON, J.**